

RISK ALERT

THE MONTHLY BULLETIN FOR WORKERS' COMPENSATION RISK MANAGERS



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PLEASE CONTACT
THE ATTORNEYS AT
TEAGUE, CAMPBELL
WITH QUESTIONS
CONCERNING THE
ARTICLES IN THIS
NEWSLETTER

RALEIGH
919-873-0166

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828-254-4515

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RUMBLINGS AT THE INDUSTRIAL COMMISSION

Mileage Reimbursement Rate Increased

As the Commission's rate for reimbursement of qualified medical travel (round trips of 20 miles or more) has tracked the Internal Revenue Service rate since 2007, it increased to \$0.505 on January 1 and, effective July 1, will increase again to \$0.585.

NCIC Educational Conference Scheduled

The 13th Annual North Carolina Workers' Compensation Educational Conference will be held at the Sheraton Imperial Hotel and Convention Center in Durham October 13-15. Those interested in attending can register online at the Commission's website, www.comp.state.nc.us.

NATIONAL WORKERS' COMPENSATION DEFENSE NETWORK SEMINAR

The National Workers' Compensation Defense Network fall seminar will be held in Tampa, Florida on October 15 and 16, 2008. For more information, visit www.nwcdn.com.

CASE LAW UPDATE

Denial of Teacher's Anxiety Disorder Occupational Disease Claim Affirmed

On June 12, in *Hassell v. Onslow County Board of Education*, the Supreme Court affirmed the Commission's denial of the claim of Barbara Hassell, a middle school teacher who developed generalized anxiety disorder ("GAD") allegedly as a result of the stressful environment in her classroom. Students who did not cause problems for other teachers verbally and physically harassed Hassell to the point that she dreaded going to work. The school principal testified that in her sixteen years as a school

administrator, she had never seen a situation as bad as what she observed in Hassell's classroom, which she felt was created by claimant herself, due to a "lack of instructional presentation and delivery."

During her tenure at the middle school, Hassell received a series of negative performance reviews for failing to follow a classroom management plan, random efforts at discipline, the negative learning climate in her classroom, errors in her grading practices, ineffective instructional presentation, lack of feedback to students, and numerous student and parent complaints. Then, while working under the school's fourth "action plan" to improve her job performance, Hassell received a warning letter, which she refused to sign. She resigned her position instead and sought psychological treatment from Dr. Dennis Chestnut.

She also filed for workers' compensation, alleging that the generalized anxiety disorder that Dr. Chestnut eventually diagnosed was a compensable occupational disease. When he was later deposed, Dr. Chestnut testified that claimant's "job was driving her crazy, was a major stressor in her life, and exposed her to an increased risk of developing an anxiety disorder as compared to members of the general public not so employed." Nevertheless, the Commission denied the claim, finding that "plaintiff was responsible for the bad environment in her classroom" and "her psychological condition was not the result of anything caused by defendant or because she was required to do anything unusual as a teacher."

As discussed in the March 2007 edition of *Risk Alert*, the Court of Appeals, in a 2-1 decision authored by Judge Hunter, affirmed the Commission's denial of Hassell's claim, concluding that her GAD did not develop from "causes and conditions ... characteristic of and peculiar to a particular trade, occupation or employment." Rather, the challenges Hassell faced in her classroom were not unlike those

confronted by the general public, including other teachers. Further, noted the Court, “plaintiff herself created the stressful work environment through her inability to perform the ordinary tasks expected of her”

In his dissent, Judge Wynn argued that the record established that Hassell experienced classroom conditions the average teacher did not. He also expressed a concern that both the Commission and the Court’s majority had inappropriately “apportion[ed] blame” on claimant for the development of her condition.

Relying heavily on Judge Wynn’s dissent, claimant’s argument to the Supreme Court was that the Commission had erred in two respects, i.e., by ignoring Dr. Chestnut’s testimony and in applying “fault principles” to its analysis of the compensability issue. But, the Court disagreed. After “expressly disavow[ing] any language from the Commission’s opinion and that of the Court of Appeals which can be read as indicating that plaintiff’s fault or responsibility for her condition ... was a valid reason to deny her claim,” the Court determined that the Commission’s findings of fact were supported by competent evidence and, therefore, could not be disturbed on appeal.

In its response to claimant’s contention that Dr. Chestnut’s opinions had been “ignored,” the Court noted that the Commission was “not required to accept the testimony of ... [Dr. Chestnut], even if the testimony is uncontradicted.” It found that “the Commission [had] considered Dr. Chestnut’s testimony and decided to give ‘little weight to [his] opinions ... concerning causation and increased risk.’” As the Commission had considered, but rejected, Dr. Chestnut’s opinions, there was no error in its determination that claimant had “failed to carry her burden of establishing either increased risk or significant contribution as required by N.C.G.S. § 97-53(13),” since “[w]ithout Dr. Chestnut’s opinions, plaintiff had no expert medical evidence to establish that her GAD was an occupational disease.”

Justice Timmons-Goodson’s dissent echoed the arguments which had been made earlier by Judge Wynn at the Court of Appeals. In her mind, the majority “erroneously upheld the denial of workers’ compensation benefits on the basis of fault or contributory negligence.” She felt that the other six justices had failed to evaluate the impact of the “irrelevant and inappropriate” language implying fault on claimant’s part and argued that “[d]enying compensation on the basis of ... fault is contrary to the provisions of the Workers’ Compensation

Act” and would “open the door for future denials of workers’ compensation benefits on the basis of the injured employee’s own less than exemplary workmanship.”

Risk Handling Hint: Reflecting on the implications of a finding of compensability in cases like *Hassell* might provide an insight into why the Commission and our appellate courts have tended to be uncharacteristically conservative in their view of occupational stress claims. To hold a claim such as Barbara Hassell’s compensable would likely open the floodgates for occupational anxiety or depression claims based upon poor job performance, which can occur in any occupation. Such claims fall within the purview of N.C.G.S. § 97-53(13), which requires a showing that the employee’s condition is characteristic of and peculiar to her employment and did not result from a hazard to which the general public is equally exposed. In keeping with the spirit and intent of N.C.G.S. § 97-53(13), the Court in *Hassell* appropriately declined to expand the compensability of occupational stress claims so as to include those founded on the kind of stress or depression which might be experienced by employees across a wide range of occupations that are not themselves inherently stressful.

Attachment of Liens to the Proceeds of Workers’ Compensation Claims Prohibited by N.C.G.S. § 97-21

Following her injury at work in February 2002, Marie Cross filed a claim for workers’ compensation. Later that year, she and CapTran, a Nevada corporation engaged in the business of investing capital in personal injury cases, entered into an agreement entitled “Transfer and Assignment of Proceeds and Security Agreement,” whereby CapTran advanced Cross \$1,500 in return for “a portion of [Cross]’ future settlement and/or litigation proceeds” from her workers’ compensation claim. That agreement, which obligated Cross to repay CapTran the principal sum of \$1,500 plus an additional “investment fee” of \$1,875, purported to give CapTran a security interest in the proceeds, if any, of her workers’ compensation claim. A month later, CapTran loaned Cross another \$1,000 and obtained an additional “security interest” in that amount, plus another “investment fee” of \$1,250, again contingent on Cross receiving workers’ compensation benefits.

After Cross settled her workers’ compensation claim, she and her attorney filed a declaratory judgment action, in which she sought a determination that CapTran did not have a lien on her workers’ compensation claim for the \$5,625 she owed under the two

security agreements. The trial court ruled otherwise, however, finding that a valid lien *had* arisen, and it ordered Cross’s attorney to withhold that amount from the proceeds of the workers’ compensation settlement and pay it to CapTran.

Cross and her attorney appealed. On June 17, in *Cross v. Capital Transaction Group, Inc.*, the Court of Appeals reversed, holding that “G.S. § 97-21, entitled ‘Claims unassignable and exempt from taxes and debt,’ prohibits assignment not only of a workers’ compensation claim, but also the proceeds of such a claim.” In explaining the rationale for its decision, the Court observed that the workers’ compensation system is a creature of statute and the applicable statutory provision “express[es] a clear intent to bar assignment of workers’ compensation benefits.” It also distinguished *State v. Miller*, in which it was determined that workers’ compensation benefits are not exempt from claims for child support because “the obligation to support one’s children is not a ‘debt’ in the legal sense of the word ...,” and *Sara Lee Corporation v. Carter*, in which the Supreme Court held that N.C.G.S. § 97-21 “does not preclude the trial court from imposing the equitable remedy of a constructive trust [over future workers’ compensation benefits]” in extraordinary circumstances when the claimant has engaged in fraud, breach of fiduciary duty, and unfair and deceptive acts or practices.

Although the Court determined that, by virtue of the provisions of N.C.G.S. § 97-21, neither of the creditor security agreements that claimant signed created a lien against the proceeds of her workers’ compensation claim, it also found that each constituted a loan in which she was the debtor and CapTran the creditor.

Risk Handling Hint: *Cross* serves as a useful reminder to risk managers that workers’ compensation benefits are neither assignable nor subject to garnishment, except under very limited circumstances, such as orders for child support. Risk managers are encouraged to contact the attorneys at TCDG when questions arise regarding whether to honor any notice of lien they might receive.

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